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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,101	01/29/2001	Roger S. Goody	256/137-US	8380

7590 07/22/2004

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EXAMINER

HUTSON, RICHARD G

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 07/22/2004

Re-START

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/622,101	GOODY ET AL.	
	Examiner	Art Unit	
	Richard G Hutson	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-42 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-848)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

Applicants preliminary amendment of claims 3, 5, 7 to 14, 17, 18, 20, 21, 23, 25 to 28, 32, 34 and 36 and the addition of claims 39-42, in the paper of 1/29/2001, is acknowledged. Claims 1-42 are at issue and present for examination.

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-13, drawn to a method for the production of a polypeptide having enhanced kinase activity and a polynucleotide encoding said polypeptide.

Group II, claim(s) 14-20, 28, 39-41, drawn to a method for the production of a polypeptide having enhance kinase activity and a polynucleotide encoding said polypeptide said method using the encoding polynucleotide.

Group III, claim(s) 21, 23-27, 37, drawn to a polypeptide having nucleoside or nucleotide kinase activity for a nucleoside or nucleotide analog.

Group IV, claim(s) 22, drawn to an antibody specifically recognizing the polypeptide of claim 21.

Group V, claim(s) 29, 30, drawn to a method for identifying an inhibitor of a nucleoside or nucleotide kinase.

Group VI, claim(s) 31-34, 42, drawn to a method for the production of a pharmaceutical composition.

Group VII, claim(s) 35, drawn to a use of an inhibitor of a nucleoside or nucleotide kinase.

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Group VIII, claim(s) 36, 38, drawn to a method for the preparative synthesis of a nucleoside phosphate analog.

Further should applicants elect invention I above, restriction to one SEQ ID NOS: 1 to 13 is also required under 35 U.S.C. 121 and 372.

The inventions listed as Groups I through VIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. Group I and Group II do not share a special technical feature, as Group I encompasses chemical synthesis methods and Group II encompasses only methods based on the use of a polynucleotide. Similarly groups V-VII comprise steps that are separate and distinct from each of the additional listed groups. Further groups III and IV drawn to the polypeptide and antibody products share no "special technical feature with either of the product groups or the method groups. Thus, any shared technical feature of the groups is not a "special technical feature", unity of invention between the groups does not exist.

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The inventions listed as SEQ ID NOS: 1 to 13 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features by virtue of their different amino acid sequences.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

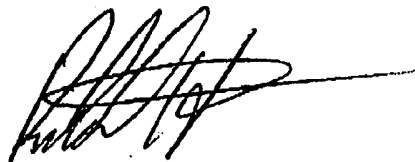
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G Hutson whose telephone number is (571) 272-0930. The examiner can normally be reached on 7:30 am to 4:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard G Hutson, Ph.D.  
Primary Examiner  
Art Unit 1652

rg  
6/24/2004